THE KENNEDY FORUM

Testimony of former Congressman Patrick J. Kennedy
Founder of The Kennedy Forum
To the Connecticut Joint Committee on Insurance and Real Estate
In Support of House Bill 7125
March 5, 2019

Thank you to members of the Joint Committee on Insurance and Real Estate, particularly Committee Co-Chairs Rep. Sean Scanlon and Sen. Matt Lesser, for holding today's important hearing on House Bill 7125. As author of the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (Federal Parity Act), I have dedicated the last decade to seeing it implemented. This landmark civil rights law requires insurers to treat illnesses of the brain, such as depression and addiction, the same way they treat illnesses of the body, such as diabetes and cancer. States play the primary role in ensuring that individual and group health insurance plans are in compliance with the Federal Parity Act. Unfortunately, few states are doing what is necessary to verify that health plans are in compliance.

Connecticut Disparities

This is evidenced by the terrible disparities that the independent actuarial firm Milliman found in Connecticut insurers' coverage of mental health and addiction care services. After evaluating millions of claims across the country, Milliman found that patients were forced to use much more expensive out-of-network coverage far more often for mental health and substance use disorder (MH/SUD) care than for other types of medical care because MH/SUD in-network care was inadequate. Milliman also found that MH/SUD providers were reimbursed at much lower rates by plans than were other health care providers. Low reimbursement rates, of course, help create inadequate insurer networks. Both are within the scope of the Federal Parity Act.

Below is a summary of the Milliman data for Connecticut and neighboring states:

	How Much MHSUD Out-of-Network Usage Higher Than Medical/Surgical Out-of-Network Usage			% Primary Care Provider Reimbursement Rate Higher Than MHSUD Provider Reimbursement
	Inpatient	Outpatient Facilities	Outpatient Office Visits (vs. Medical Specialist)	
Connecticut	**16.9x**	**11.0x**	**8.0x**	**39% higher**
New York	8.3x	2.5x	4.8x	15% higher
Rhode Island	8.0x	5.4x	2.9x	19% higher
Massachusetts	5.8x	6.5x	4.4x	55% higher
National	4.2x	5.7x	3.6x	21% higher

Based on these numbers, Connecticut had nation's worst disparity for outpatient office visits, second worst for inpatient facilities, and seventh worst for outpatient facilities.

HB 7125 Provisions Align with Model Bill

Simply put, these numbers indicate that health insurance plans are almost certainly not in compliance with the Federal Parity Act. Strong action is needed to hold plans accountable. House Bill 7125 would take important steps forward in holding plans accountable by requiring that they submit information necessary to prove that they are in compliance with the Federal Parity Act. Many of HB 7125's provisions closely mirror The Kennedy Forum's model state parity legislation. These provisions include:

- ***A Strong Definition of "Mental Health and Substance Use Disorder Benefits."*** HB 7125 ties the definition of MH/SUD to the current editions of the International Classifications of Disease and the *Diagnostic and Statistical Manual of Mental Disorders.*
- ***Robust Health Plan Reporting Requirements.*** HB 7125 contains reporting requirements for plans relating to the nonquantitative treatment limitations (NQTLs). Each plan's report must be submitted to the Insurance Commissioner, Attorney General, Healthcare Advocate, and executive director of the Office of Health Strategy.
- ***Removing Barriers to Substance Use Disorder (SUD) Medications.*** HB 7125 includes language that prohibits step therapy and prior authorization requirements for FDA-approved SUD medications. The bill also prohibits health plans from refusing to cover SUD medications based on the fact they were prescribed pursuant to a court order. Furthermore, the bill requires SUD medications in the formulary to be placed on the lowest formulary tier. With over 1,000 people in Connecticut dying of drug overdoses last year, these provisions will save lives by removing barriers to medication-assisted treatment.

Many other states are now enacting similar protections. For example, the newly enacted Illinois parity law enacted last year adopted all of these provisions. Other states, including Tennessee and Delaware, have recently put in place one or more of these provisions. But more work needs to be done to protect patients.

Expanded Reporting Protects Consumers

HB 7125 also includes a unique provision that is promising for other states to potentially consider. By requiring plan reports to not only be distributed to the Insurance Commissioner, but also to the Attorney General, Healthcare Advocate, and executive director of the Office of Health Strategy, HB 7125 involves a broader range of government officials in ensuring parity compliance. HB 7125 provisions mandating an annual hearing of this committee on health plans' reports and requiring the Insurance Commissioner, Attorney General, Healthcare Advocate, and executive director of the Office of Health Strategy to assess whether each plan's report demonstrates compliance with the Federal Parity Act further increases accountability.

Further Steps to Improve Parity

Of course, fully ending discrimination in the coverage of MH/SUD care requires a multi-pronged approach. While HB 7125 would take a big step forward, there are additional ways that should be considered in the future to improve parity compliance even further in Connecticut:

- ***Promoting NQTL Comparability Analysis.*** While key provisions of HB 7215 are based on The Kennedy Forum's model legislation, several critical provisions of the bill are missing. For example, HB 7215, as currently drafted, does not require health plans to demonstrate compliance through an NQTL comparability analysis between MH/SUD and traditional medical/surgical services. This represents a significant loophole where health plans can claim they are compliant but are not in practice. It is my understanding that the bill will be amended to replace Section

1(b)(3)(C) with the model bill provisions, which were drafted in a very deliberate way to track the federal NQTL that is contained in the final regulations.

- ***Requiring Parity Market Conduct Exams.*** Health plan compliance will be improved if insurers are subject to a parity market conduct exam. For example, Illinois and the District of Columbia now require that state regulators conduct market conduct examinations to evaluate health plan parity compliance levels. These jurisdictions also require state regulators to submit a public report to the legislature/council on their parity enforcement activities for the previous year.
- ***Expanding What is Reported.*** Reporting is only as good as the information included in those reports. Several states have expanded the information that is shared regarding parity compliance. New York has also put in place new disclosure requirements for claims data, comparing MH/SUD claims to medical/surgical claims. By highlighting disparities, making such claims data publicly available is important to improving parity compliance.
- ***Ranking Health Plans.*** With all of the focus on enforcement, it is important to educate consumers on their health insurance choices. For instance, the New York Insurance Commissioner must issue an annual consumer guide that ranks each insurer from best to worst on parity compliance.
- ***Promoting Consumer Protections.*** Several states have also recently created behavioral health ombudsman programs to help consumers access care, fight wrongful denials, and track parity violations. These include in states as diverse as Texas, Colorado, and New York.
- ***Authorizing/Increasing Penalties for Noncompliance.*** We must also look at additional ways to end discrimination. For example, both state and the federal governments must require fines for willful, and even negligent, parity violations and give consumers the right to bring court cases to protect their rights.
- ***Improving Evidence-Based Pathways.*** Insurers must also be required to use independent medical necessity criteria that are fully consistent with generally accepted standards of care for all types of insurance coverage, but especially for MH/SUD services. Unfortunately, all too often insurers create their own clinical review criteria that are subjective or otherwise manipulated to wrongly deny coverage through medical necessity determinations. Connecticut has taken an important first step by mandating the use of some evidence-based clinical pathways such as the American Society of Addiction Medicine's (ASAM) criteria. But it is critical that state regulators ensure that health plans use and interpret the criteria in an objective manner as intended by the professional medical society or other applicable expert group that developed them.

Thank you, Rep. Scanlon, Senator Lesser, and members of the Joint Committee on Insurance and Real Estate for your leadership on ensuring access to mental health and substance use treatment services. By holding health plans accountable, we can improve parity compliance and work towards ending discrimination.